



Appeal Decisions

Site visit made on 7 December 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 December 2021

Appeal A Ref: APP/W3330/C/21/3281471

Land at Cattlewash, Fitzroy, Norton Fitzwarren, Taunton, TA2 6PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Malloy against an enforcement notice issued by Somerset West and Taunton Council.
 - The enforcement notice, numbered E/0210/20/19, was issued on 12 July 2021.
 - The breach of planning control alleged in the notice is the change of use of that part of the land edged blue on the plan attached to the notice from agricultural use to domestic use.
 - The requirements of the notice are to cease the use referred to in the allegation including the cessation of the use of that part of the land shown edged blue on the plan for the keeping and exercising of domestic dogs.
 - The period for compliance with the requirements is one month.
 - The appeal is made on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/W3330/C/21/3281500

Land at Cattlewash, Fitzroy, Norton Fitzwarren, Taunton, TA2 6PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Malloy against an enforcement notice issued by Somerset West and Taunton Council.
 - The enforcement notice, numbered E/0210/20/19, was issued on 12 July 2021.
 - The breach of planning control alleged in the notice is the construction on the land of two dog kennels in the approximate position delineated in green on the plan attached to the notice.
 - The requirements of the notice are (1) to demolish the kennels referred to in the allegation, and (2) remove from the land all materials resulting from such demolition.
 - The period for compliance with the requirements is one month.
 - The appeal is made on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by the deletion of "for the keeping and exercising of domestic dogs" in the requirements and the substitution of the following requirement "for domestic purposes". Subject to this variation the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. Both notices have been issued with the same reference (E/0210/20/19), which is a confusing practice followed by the Council.
4. The notices also referred to the incorrect dates for when they take effect. The Council subsequently amended the dates to 23 August 2021.

The site and relevant planning history

5. The appeal site outlined in red on the plan attached to the notices is located in open countryside and contains two distinct areas.
6. The area fronting the highway includes an old barn type building known as Cattlewash and a large dwelling under construction. To the rear and beyond a public footpath that crosses the site is a field outlined in blue on the plan which is the subject of Appeal A. Within the blue outlined land are buildings outlined in green and described in the notice as two dog kennels and which are the subject of Appeal B. Adjacent to these two kennels is a further kennels building which, I am advised, is immune from enforcement action through the passage of time.
7. It appears to me that the blue outlined area is a separate planning unit to that occupied by the buildings fronting the highway.
8. In 2012 a Certificate of Lawful Development for the continued use of the building (Cattlewash) as a residential dwelling was issued (20/12/0032). In October 2017 a replacement dwelling was approved.
9. The appellant states that the Certificate allowed the use of the remainder of the land as domestic curtilage but that aspect of the Certificate was subsequently quashed¹. An application for a change of use from agricultural to domestic was refused and dismissed on appeal in May 2021.

Appeal A – the appeal on ground (f)

10. In Appeal A the appellant considers that the requirements are excessive and go beyond the Council's power to prevent the exercising of dogs and that the exercising of dogs within the field does not constitute a material change of use. The Council claims that this is not a requirement of the notice. However the Council's response is somewhat puzzling as the requirements of the notice are clearly stated and refer to the ".....keeping and exercising of domestic dogs."
11. As the allegation refers to a change of use from agriculture to domestic use, it is not necessary to refer to anything more in the requirements than to state "cease the use of the land for domestic purposes" and I propose to vary the requirements accordingly.
12. The neighbours in the next door property known as 'Ilbeare' agree that the incidental exercising of dogs in the field is disproportionate but have concerns over how such use would be enforced. They suggest that the notice should

¹ It should be noted that 'curtilage' is not a use of land but as both parties have failed to include a more detailed planning history of the site, it is not clear why such a term was used.

specifically request the removal of all dog enclosure fencing in and bordering the field. However, the allegation makes no specific reference to enclosure fencing and nor has the Council made the removal of the fencing a requirement of the notice. I cannot make such a variation to the notice without it causing injustice to the parties and I do not intend to do so. If the Council consider it expedient in the future to take separate enforcement action in respect of any such enclosures which may require planning permission, that will be for them to determine.

13. The appeal on this ground succeeds and the notice will be varied accordingly.

Appeals A and B - appeals on ground (g)

14. The appellant requests that the time for compliance be extended to 6 months. The appellant states that he is in discussion with the Council regarding the potential change of use of the small existing dwelling on the site to an ancillary use that could provide alternative kennels. Additionally, the construction of a replacement dwelling is imposing significant financial and time constraints on the appellant.
15. The Council considers that the kennels should be easy to remove and that the domestic dogs could be housed in the dwelling on site whilst the new dwelling is under construction.
16. The neighbour questions the justification for an extension of the compliance period considering that there are alternatives that would minimise any financial strain and that the keeping of dogs as a hobby should not be allowed to continue to the detriment of the public. He points out that the appellant's thoughts in respect of the use of the existing dwelling as kennels was the subject of an application in 2017 but that this application was subsequently withdrawn. He points out and that even if such an application were to be approved and the conversion undertaken all within the 6 month compliance period, this would require a significant acceleration to the pace of work since 2017.
17. Although the neighbour is critical of the period of time that has elapsed for the appellant to take action to resolve the situation, the appellant is exercising his rights to appeal the notices.
18. Notwithstanding this, a six month compliance period is excessive. It would not be in the public interest for the harm caused by the unauthorised operations and use to remain longer than the minimum necessary and the shorter period of one month would be reasonable in order for the appellant to make the necessary arrangements to comply with the requirements of the notices.
19. In reaching this conclusion, I am mindful that the lawful kennels will remain on the land albeit that neither party has considered it necessary to indicate by way of these appeals the number of dogs housed in those kennels, and indeed, whether that lawful use incorporates the exercising of dogs on the appeal site.
20. The appeals on this ground fail.

Conclusions

Appeal A

21. For the reasons given above I conclude that the requirements are excessive in Appeal A and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Appeal B

22. For the reasons given above I consider that the appeal should be dismissed.

P N Jarratt

Inspector